IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY

WEDNESDAY, THE 31ST JANUARY 2007 / 11TH MAGHA 1928

CRL.A.No. 717 of 1999()

SC.17/1998 of 1ST ADDL.ASSISTANT SESSIONS COURT, ERNAKULAM
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APPELLANT/COMPLAINANT:

STATE, REP. BY THE PUBLIC PROSECUTOR,
HIGH COURT, ERNAKULAM.

BY PUBLIC PROSECUTOR K.C.SANTHOSH KUMAR

RESPONDENT/ACCUSED:

DOMINIC @ TOMY, S/O.VARGHESE,
KOLLAMPARAMBIL VEEDU, RESIDING AT
PIPE LANE, ALUVA DESOM, ALUVA VILLAGE.

BY ADV. SRI.T.I.DANIEL

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 31/01/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

J.B.KOSHY, J.

Criminal Appeal.No.717 OF 1999 ()

Dated this the 31st day of January, 2007

JUDGMENT

This appeal is filed against the order of acquittal by the State. Respondent/accused was charge sheeted for the offences punishable under Sections 306 and 498 (A) of the Indian Penal Code. The allegation of the prosecution is as follows: The accused married one Sophy on 16.5.1994. They were residing at the residence of the accused at Aluva. He was employed in Soudi Arabia, from where he send to Sophy two audio cassettes containing his statements which were intended to torture Sophy mentally. The cassettes were delivered to Sophy on 28.11.1996. Hearing the audio cassettes, Sophy became disappointed and as a result of which at about 1 p.m. on 30.11.1996 she committed suicide by jumping into Vaduthala river. The accused treated Sophy with cruelty and abetted her to commit suicide and hence accused is guilty of the charges levied against him. The marriage between accused and Sophy on 16.5.1994 is not disputed. Sophy committed suicide on 30.11.1996. The allegation is that she

committed suicide only after she became disturbed while hearing the wordings in the cassette delivered by her husband who is in Soudi Arabia. The wordings in the cassette is as follows: (translated version)

> "Whatever may be the consequence I will summon all the membes of your family and tell them everything. You will not be sent to Aluva ? You may live there. I will not live with you hereafter. True, I have no hope. You may not see the old Tomon in me. Your life will be a lamentation. You will not escape from it and me. Never. You may bear it in mind. With an open mind Tomon says only True words. What I say will be done. Always. They and even my friends here know it. On the second word I will attack. That is my nature. But I have not revealed it to you, you have not experienced or known it. You may mark it always. Sometimes your family may give you in marriage to another man; and you may marry. You may divorce our marriage and lead a life of your own. Atleast thus I will be saved. I am fed up with the life with you, which is why I say this. I am a dirty guy. Yes, I am dirty. I am only going to show how dirty I am. So far I have depended on you only. Now I will show you how dirty I am. You have seen only one face of mine. Did not the members of my family warn you to be careful in playing with me, and talking with me. They know all my nature very well. Even my friends here know what my nature is. If you say much dirty things again, I will be coming over there only to finish you. You may bear it in mind. Using kerosine I will burn you alive. I have no hesitation to do anything; you should not forget it. You will not get me as your old Tommy Mon, never, I have hated you like anything because of everything. If you had died on that day, it would have really done me good now. Now I say this because I hate you so much; otherwise I would not have said."

The court found that even if the above recordings in the cassette is in the voice of the accused and it was send by him it cannot be treated as an abetment to suicide. This is only a statement wherein accused expresses his frustration in marriage life and mere threats of assault, divorce, murder etc. cannot be taken as an abetment to suicide. It is further stated that he behaved always decently to the wife but because of her behavior he may change and may take the true color. There is no evidence that he has actually assaulted the deceased while they were living together. The suicide was committed at Alwaye on 30.11.1996. At that time her husband was not even in India. The Sessions Court rightly found that the mere threat in the recorded statement that he will divorce and he may even kill the wife, because of the frustration in the family life will not amount to abetment of suicide. In any event, findings of the trial court is a possible one. I see no ground to interfere in the order of acquittal of the Session Court and hence this appeal is dismissed.

J.B.KOSHY, JUDGE

prp

J.B.KOSHY

Criminal.Appeal.717 OF 1999

JUDGMENT

31st January, 2007